

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	
	:	
-v-	:	03cr1102 (DLC)
	:	
JOEL UBIERA,	:	<u>ORDER</u>
	:	
Defendant.	:	
	:	
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DENISE COTE, District Judge:

On August 21, 2020, the U.S. Court of Appeals for the Second Circuit issued an order granting the defendant's motion for a certificate of appealability, vacating the denial of his motion under 28 U.S.C. § 2255, and remanding for further proceedings; the mandate issued on October 13, 2020. On October 18, the Government represented that the defendant's conviction for violating 18 U.S.C. § 924(c), predicated on a robbery conspiracy, must be vacated following United States v. Davis, 139 S. Ct. 2319 (2019), and United States v. Barrett, 937 F.3d 126 (2d Cir. 2019). The Government further requested that the Court set a date for resentencing. On October 21, the United States Probation Office advised the Court that the defendant may have been deported. An updated Presentence Report is expected by November 20, 2020. Accordingly, it is hereby

ORDERED that, by **November 20, 2020**, the Government shall report whether the defendant has been deported.


IT IS FURTHER ORDERED that, in the event the defendant has been deported, defense counsel and the Government will advise the Court by **December 2, 2020** of what further steps should be taken in light of the remand for resentencing.

IT IS FURTHER ORDERED that, if the defendant has not been deported, counsel for the defendant shall, by **December 4**, advise the Court of whether the defendant agrees to waive his physical presence at the resentencing and appear by videoconference or if he prefers to be present in court for resentencing.

IT IS FURTHER ORDERED that the defendant's sentencing submission shall be filed by **December 4**. The Government's submission shall be filed by **December 11**.

IT IS FURTHER ORDERED that sentencing in this matter shall proceed on **December 18, 2020 at 2:00 p.m.**

Dated: New York, New York
November 13, 2020



DENISE COTE
United States District Judge